File No. 739

1937.

Collection No.

11/7/67 Mysore Residency
Bangalore

(K)

Pros. Serial Nos. 1 – 3

(P-13)

Subject.

Income-tax Revision Petition No. 1 of 1937-38.
Messrs. Nankerwis Ltd., Bangalore.

Previous References.

Later References.

S. 97.—(Blue).

MFP—393 S&P—(M-625)—28-7-36—100,000.

NOTES AND PRECIS.

C.p. 1 (PUC I) D.No. 4351 S.N. 1
" 6 " II " 4353 " 2

This is a petition for review under Section 33 of the Indian Income-tax Act. The records may be called for as usual. On their receipt the merits of the case will be -- examined and a note put up.

2

The point for immediate consideration is whether the petitioners' request for a stay order should be granted or not. In this connection please see Sections 45 and 46 of the Act and para 115 of the Notes and Instructions regarding the Income-tax Law and Rules. In the present case the Income-tax Officer has taken action under Section 46(2) of the Act and sent a certificate to the Collector as -- laid down in that Section and the Collector is now taking steps to recover the amount as if it were an arrear of land revenue. The Commissioner of Income-tax cannot ask the Collector to suspend execution of the warrant issued by him. What he can do is to ask the Income-tax Officer to move the Collector to suspend action on his (I.T.O's) certificate pending disposal of the Review petition. Under Section 33 of the Act the Commissioner has power to revise any orders passed by any income-tax official. The -- exercise of this power is discretionary. Orders are -- solicited

* Pages 264-265 of Income-tax Manual

† Portion sidelined on page 449 of Sundaram's Law of Income-tax

@ Portion sidelined on page 829 of -do-

solicited whether in exercise of this discretionary -- power the Commissioner is disposed to issue a stay order directing the Income-tax Officer to ask the Collector to suspend the collection of income-tax pending disposal of the petition under reference.

30-4-37 (From para 1)

30.4.37

Secretary
Through Judicial Branch

Asstt 1.5.37

3. The Act does not appear to confer on the Commissioner any power to order stay of proceedings pending any matter before him. Exercise of powers under section 33 is purely discretionary.

4. The question whether the Commissioner has inherent power to order stay appears to be open to doubt. In a Calcutta case a question arose whether inherent power of 'review' existed under a Bengal Act when there was no specific provision in the Act in that behalf. It was held that 'review' is a power expressly given by law under certain conditions, and therefore it could not be assumed that when not so given it was inherent in every officer.

* 22 Cal. 419.

5. But the matter rests entirely in the discretion of the Commissioner. "Stay" order technically so called may be objectionable. But if the Commissioner is satisfied that the assessment is based on a bona-fide error and that undue hardship will be caused to the assessee if the distraint proceeded, there is no point in allowing coefcive measures to be continued. It appears the Commissioner may instruct the Income Tax

Income-tax Officer to with-hold recovery of the income-tax pending a decision by him on a reference made to him.

ASR
1.5.37

1 1). Clearly the tax collection can't be delayed.

7 2). I see no reason to call for the record or interfere. The assessment was for 1935-36, & even if a mistake was made by the Company in allocating their bad debts, this was disclosed in the Auditor's report of Feb. 1936, over a year ago. The provision for revision clearly must not be turned into an appeal, not barred by limitation.

8 3). Draft to petitioners saying that the Commissioner does not propose to interfere.

1 4). In future, I do not want any notes on Income-Tax Petitions: merely Income-Tax clerk may bring the petition personally with the relevant sections of the Act marked A.S.15 see.

3/5/37

Hawelyan
3/5/37

Draft submitted.

3-5-37

3.5.37

Hawelyan
4.5.37.

S.N. (3) 2nnn

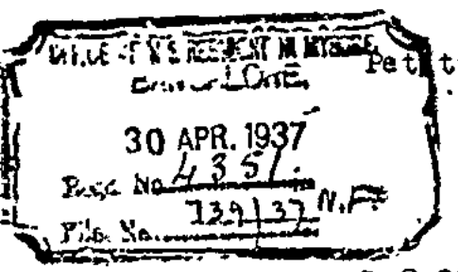
Record Room

CORRESPONDENCE.

S.N.1 (Pt.I) 11

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,
CIVIL AND MILITARY STATION, BANGALORE.

Income-Tax Review Petition No. of 1937-38.



Petitioners: Messrs . Nankervis Ltd.,
Automobile Engineers,
1, Central Street, Bangalore.

The Petitioners were assessed to Income-tax of Rs.2,892-2-0 on a net income of Rs.18,306-0-0 for the year 1935-36.

2. The assessment was based on a return of income furnished by the petitioners for the year 1934-35 - vide assessment order dated 5th December 1936, submitted herewith.

3. This return of income was prepared by the petitioners on the strength of a profit and loss statement compiled by the Company's Auditors, Messrs. Fraser & Ross, Madras.

4. Petitioners submit that this Profit and Loss Statement and therefore the return of income furnished by the petitioners do not disclose the true state of the financial position of the Company during that year- bad debts to the extent of Rs. 19,318-9-6, as per list submitted herewith were not by mistake written off before preparing the Statement. This fact was disclosed in our Auditor's report dated the 6th February 1936 which ran thus :-

"When comparing the result for the year ended 31st March, 1935, with that for the subsequent nine months it

must be borne in mind that practically the whole of the reserve for bad debts for the twenty one months has been charged against the latter period."

If this has been done, the Profit and Loss Account would have shown a loss of Rs. 4880-9-9 instead of a profit of Rs. 14,437-15-9.

5. This has caused a great hardship to the Company and its shareholders. In a year during which they have sustained a loss they have been called upon to pay an Income-Tax of Rs. 2892-2-0.

6. The mistake came to light only last month during the course of audit of accounts for 1935-36 and it was then too late to apply to the Income-Tax Officer for a fresh assessment, or to appeal to the Assistant Commissioner.

7. The petitioners, therefore, request that the Commissioner may be pleased to review the assessment under Section 33 of the Income-Tax Act, 1922.

8. The petitioners also request that pending orders on this petition, the collection of tax may kindly be ordered to be deferred. The petitioners understand that the Income-Tax Officer has applied to the Collector for the issue of a distraint warrant for collection of the Tax.

For Nankervis Ltd.,

E. J. Carter.

Lieut.-Col.
MANAGING DIRECTOR.

Memorandum.

No. F.2309 Enc.

From

The INCOME-TAX OFFICER,
Civil and Military Station,
BANGALORE.

Dated 5th December 1936.

To

Messrs. Nankervis Ltd.,
South Parade,
Bangalore.

Income-tax assessment - 1935-36
Assessment Order.

Assessment is made as follows:-

BUSINESS:-	Income as returned	19,341- 8-0
Add:- LEGAL & AUDIT FEE - Rs.1,038. Of this Rs.188-9-0 relates to legal expenses incurred on behalf of the debtors. This is inadmissible since it should be debited to their personal accounts.		188- 9-0
Travelling & entertainment charges -Rs.3,340/- In this are included several small items which are inadmissible: e.g., 7-11-1934 Amount paid to Indian free School- Rs.3/- 8-11-1934 Amount paid to Little Sisters of the Poor - Rs.5/-		
	Estimated disallowance	30- 0-0
	Total	19,560- 0-0
LESS:- Depreciation -		
Buildings - 5% on Rs.11,452/-	572-9	
Machinery & workshop equipment - 5% on Rs.7,223/-	361-2	
Furniture - 5% on Rs.6,403/-	320-2	
		1,253-13-0
	Total & taxable income ...	Rs.18,306- 0-0

Demand notice and chalan are enclosed herein.

DESPATCHED

INCOME-TAX OFFICER.

IRRECOVERABLE BOOK DEBTS AS ON 31st MARCH, 1935.

			Rs.	As.	Ps.
	13	C.H. Ashe.	4	14	0
	30	E.C. Baines.	76	8	0
	52	Sivananjappa Setru.	78	5	0
	Sanyanarayana Rao. D.S.		31	0	3
	14	Smith A.W.	851	9	9
	15	Vamdeeva Rao H.S.	1764	4	0
		-Do-	731	2	0
	Old Ledger.				
	Vol.1.				
	2	Syed Abdul Khader.	6	10	0
	2	Azeez. S.A.	1212	0	0
	43	Bangalore Cycle and Motor Co.	6	5	0
	87	Rupert Lupprian.	5	5	0
	128	Rozario Mrs. A.	1815	15	6
	147	Davidson.	12	5	6
	180	Ramsay.	7	8	0
	184	Ranganathan Dr. V.G.	4	9	0
	220	General Motors (India) Ltd.	243	13	6
	224	Sastri. Mr. V.T.	251	10	0
	236	Hill. T.	4	8	0
	237	Horley. H.S.	21	9	3
	240	Hosie. H.A.	26	2	0
	242	Iyengar. T.N.R.	481	14	0
	270	Jack Singh.	205	15	6
	292	Sugden. Capt. C.S.	6	8	0
	314	Appachoo. Sub-Inspector.	17	1	6
	318	Swamy. A.K.	249	12	0
	327	Laxmana Rao. V.	153	12	7
	383	Mendoza. L.	57	13	3
	403	Mohamed Oosman. Dr.	18	1	3
	409	Saith M.J.	4	8	0
	422	Narasimha Rao. P.	3	8	0
	440	Tampoe Phillips.	169	14	6
	452	Powar. H.B.	30	14	0
	464	Puttiah.	13	11	0
	523	Desai. F.M.	5	10	0
	560	Wright.	5	0	0
Vol.2.	8	Shankar Motor Co. (Car a/c)	163	10	0
	17	Shankar Motor Co. (Parts A/c)	113	13	0
	21	Brownlie Lt.C.A.	30	14	3
	24	Chander. Dr.	3	8	9
	25	Desai. H.R.	52	14	0
	25	Dickenson Capt.F.R.	65	5	0
	26	Dillion Jockey.	78	0	0
	27	Eadle, Lt. E.B.	27	15	6
	28	General Trading Co.	209	7	0
	28	Garette. O.	4	0	0
	29	Gundoo Rao. T.K.	95	8	3
	31	Jaffar, Capt.	178	14	0
	31	Janakiram. A.C.	7	8	0
	32	Janakappa & Gunjappa Setru.	51	8	0
	33	Kilbene E.M.	65	12	6
	35	Lingappa & Sivalingappa.	214	12	0
	35	Maney. V.W.	72	2	3
	36	Mysorewalla S.J.	140	4	0
		Carried over.	10155	11	10

		Rs.	As.	Ps.
	Brought forward.	10155	11	10
37	M.C.N. Motor Service.	21	2	0
40	Phillips. G.	57	1	0
40	Phipps.	15	12	0
41	Rajaram. K.V.	24	0	0
42	Ramaswamy H.C.	6	9	6
41	Ryan. M.	19	1	6
43	Ranganathan. K.V.	16	0	0
43	Saalaam S.A.	57	12	0
45	Surya Film Co.	5	0	0
46	Sampangi Ramiah.	5	4	0
46	Stephenson W.A.	14	9	11 0
49	Universal Stores, Shimoga.	1746	13	9
50	Wauchope, Major.	143	2	6
50	Walker L.H.	761	10	0
72	Wade, Major.	0	12	0
81	Turner. J.T.	5	15	9
255	Tyrell Major.	200	0	0
263	Madurai, driver.	3	0	0
2	Nankervis	2012	0	0
9	Nankervis T.C.	1753	12	5
20	Hebbar. K.R.	1770	8	0
13	Lubricating Oil Syndicate.	378	4	3
329	Laxamana Rao. M.	14	0	0
	Total.	19318	9	6

(Rupees Ninteen Thousand Three Hundred and Eighteen, Annas Nine and Pies Six)

For Nankervis Ltd.,

E. J. Carter.

Lieut.-Col.
MANAGING DIRECTOR.

S.N.2
S 394/(P2.0 II)

TELEGRAMS:
"NANLIM."

NANKERVIS LTD.

TELEPHONE:
SHOW ROOM: 110
WORKS: 128

DEALERS,

HUDSON TERRAPLANE CARS

25, SOUTH PARADE,

BANGALORE

30 4 37 3.30 P.M.

OFFICE OF THE COMMISSIONER OF INCOME-TAX
BANGALORE
30 APR. 1937
F. No. 4353
File No.

IMMEDIATE.

No.1-C, Central Street,
Bangalore, 30th April, 1937.

To

The Commissioner of Income-Tax,
Civil and Military Station,
B a n g a l o r e.

Ref: Our Income-tax Review Petition presented to you in person this day.

Dear Sir,

The Collector has already issued an attachment warrant in connection with the collection of Income-tax. Will you very kindly issu immediate orders to withdraw the warrant until final orders are passed by you on our petition, as requested in the last paragraph of our petition. This will save this company from unnecessary loss and trouble.

Thanking you in anticipation,

We beg to remain,
Dear Sir,
Yours faithfully,
For Nankervis Ltd.,

E. J. Carter.

Lieut.-Col.
MANAGING DIRECTOR.

S.N.3

7

In the Office of the Commissioner of Income-tax, C.& M. Station, B'lore.

No. F.739/37 dated Bangalore 10 May 1937
R.O.I

Issued 6.18/5/37.

4.5.37

Income-tax Review petition No. 1.of 1937-38.

Petitioners :-

Messrs.Nankervis Ltd.,
Automobile Engineers,
1,Central Street, Bangalore.

ORDER

I do not propose to interfere.

Commissioner of Income-tax

To

Messrs Nankervis Ltd.,
Automobile Engineers,
1, Central Street, Bangalore.

The Asst. Commr. of Income-tax,
C.& M. Stn., Bangalore.

3-5-37

3.5.37